IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6294 OF 2006

1. Shri Kashinath Nathu Patil & 4 ors.] .. Petitioners

Versus

1. The Special Land Acquisition Officer]
Ulhas Valley Project & 3 ors.] .. Respondents

Mr. P.B. Naiknaware for the petitioners.

Mr. Abhishek Sawant i/b M/s. Little & Co. for the respondent No.2.

CORAM: S.B. MHASE, &
R.S. MOHITE, JJ.

DATED: 02ND APRIL, 2007

P.C. :

. Heard.

2. Petitioners land was acquired for M.I.D.C. by following the procedure of acquisition. The possession of the land of the petitioners has been taken by the Government and ultimately has been handed over to the M.I.D.C. The petitioners contend that inspite of handing over of the possession of the land, some portion of the land is still in possession of the petitioners and the said land being surplus land should be returned to the petitioners and for such Writ, the petitioners have approached this Court. We asked the learned

counsel whether under the M.I.D.C. Act there is any provision under which the land can be declared as surplus by M.I.D.C. He submitted that there is no such provision. Then, he pointed out the provisions of M.I.D.C. Act viz. Section 39 so as to say that the land can be allotted to the petitioners by M.I.D.C. However, the said Section comes into play when M.I.D.C. decides to dispose of the land which is not used by M.I.D.C. and, in that eventuality, the land has to be offered first of all to the erstwhile owner as provided in the said Act. However, in the present matter, M.I.D.C. has not taken such a decision to dispose of the land as yet and, therefore, the provisions of Section 39 are not applicable. The possession of the petitioners, after the delivery of lawful possession under the acquisition scheme is an illegal possession and Writ cannot follow to protect such illegal possession of the petitioners.

3. Taking into consideration the totality of the circumstances what we find is that the Petition is not tenable in law. Even if we consider the same qua Section 39, it is a premature Petition and, therefore, we refrain to entertain the Petition and it is hereby rejected.

Sd/-
[R.S. MOHITE, J.]

Sd/-
[S.B. MHASE, J.]